



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

November 21, 1947

Hon. Ben D. Geeslin
County Attorney
McCulloch County
Brady, Texas

Opinion No. V-438

Re: Authority of the Commissioners' Court to grant ex officio salaries to county officers any time in the year.

Dear Sir:

We refer to your request for an opinion from this office on the above subject matter in which you ask the following questions:

"1. May the Commissioners Court make an order granting ex-officio pay to County Officers at any time during the year?"

"2. May the Commissioners Court pay to the Tax Assessor-Collector of McCulloch County an ex-officio salary?"

McCulloch County has a population of 13,208 inhabitants according to the 1940 Federal Census. Its county officials are compensated on a fee basis and the maximum compensation allowed under Article 3883, V.C.S., and Article 3891, V.C.S., as amended by S. B. 123, Acts 49th Leg., p. 244, is \$3,750.00. The authority for the Commissioners' Court in counties in which its county officials are compensated on a fee basis to allow such county officials ex officio compensation is found in Article 3895, V.C.S., which provides as follows:

"The Commissioners' Court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation

for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court."

It was held in Taylor v. Brewster County, 144 S. W. (2d) 314, that the granting of ex officio compensation was entrusted to the discretion of the Commissioners' Court by Article 3895 and that there was no time specified in said Article as to when the Commissioners' Court could grant ex officio compensation. We quote the following:

" . . . Conditions existing as provided in Art. 3895, it might validly make this allowance. It clearly appears from the agreed statement of facts that but for the ex-officio allowance the fees of office would not have amounted to the maximum of \$3,000, which was the maximum compensation allowed appellant Taylor. The time when the Commissioners' Court may make this allowance is not specified in Art. 3895. The allowance does seem large. However, we have not the benefit of the amount realized in fees of the office during preceding years. Under the conditions named in the statute it was entrusted to the discretion of the Commissioners' Court. If these conditions did not exist or could not exist, the action of the Commissioners' Court would be void and conferred no authority for the payment. The quoted portion of the stipulation is as to an ultimate fact. Only acting in the manner provided for in the quoted statute could it authorize the payment. It has power to act in the premises. Action was taken therein. The construction is justified, if not compelled, that it acted lawfully. . . ."

In the case of Tarrant County v. Hollis, 76 S. W. (2d) 198, writ dismissed, the Court was consider-

ing an order of the Commissioners' Court authorizing the payment of ex officio compensation, and it announced the following rule of law covering the payment of such compensation:

"The order was entered just thirty-one days after appellee took office and at a time when the commissioners' court did not know what service 'ex-officio' the appellee would render or what amount he would collect in fees of office, i. e., what his compensation therefrom would be. The fact that in that one order the commissioners' court fixed the same ex officio compensation of \$1,500 for the constable, the justices of the peace, the assessor, the collector, and the district clerk is strongly suggestive that the court did not consider seriously just what 'ex officio' services these officials would render, but since it is not necessary to our decision to do otherwise, we indulge the presumption of correctness, which is ordinarily due a court judgment. We do call to the attention of the commissioners' court that not only must the ex officio services be rendered, but that such compensation therefor must be 'necessary.' It violates the spirit of the act for a commissioners' court to make such order merely to enable the petitioner to make the maximum allowed by law. The record is wholly silent as to what, if any, services those various officials were to perform, each in his different line of work, but each none the less of the same value to the county. If the purpose was only to increase the pay of those officials without any ex officio service contracted for, then the order was improper. We are unwilling to give the order a construction which its language does not warrant, and which, if so construed, would suggest imprudence on the part of the commissioners' court."

In view of the foregoing, it is our opinion that the Commissioners' Court of McCulloch County is authorized to allow ex officio compensation at any time during the year.

Your attention is directed to the fact that

any allowance of ex officio compensation would be subject to the Budget Law. 689a-11, V.C.S.

Article III, Section 53, Constitution of Texas, provides:

"The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law."

In view of this provision of the Constitution, it is our opinion that if the Commissioners' Court of McCulloch County decides to grant ex officio compensation, such compensation can only be for services rendered from the date of the order of the Commissioners' Court granting the same.

In answer to your second question, Tarrant County vs. Hollis, infra, held that the Commissioners' Court may allow ex officio compensation to those officers who perform "ex officio services" provided the Court finds such compensation necessary. Therefore, if the Commissioners' Court of McCulloch County finds that the tax assessor-collector performs "ex officio services" and compensation for such services is necessary, it is our opinion that the Commissioners' Court may allow the tax assessor-collector ex officio salary.

SUMMARY

The Commissioners' Court of McCulloch County (operating on a fee basis) is authorized to grant ex officio compensation to its tax assessor-collector if it finds that the tax assessor-collector performs "ex officio services" and that compensation for such services is necessary. Ex officio compensation may be granted by the Commissioners' Court at any time during the year, but such compensation must be for services rendered subsequent

to the date of the order of the Commissioners' Court granting the same.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *John Reeves*
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Assistant

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APPROVED:

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ATTORNEY GENERAL